September 8, 2016

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Commission Staff August 22, 2016 Regressions, WC Docket Nos. 16-143, 05-25, RM-10593

Dear Ms. Dortch:

AT&T and CenturyLink hereby submit the attached Fourth White Paper by Drs. Israel, Rubinfeld and Woroch ("IRW Fourth White Paper"), which evaluates the Commission Staff's most recent round of regressions for DS1 and DS3 services.[1] These new regressions address a technical issue related to the method for estimating the statistical significance of the regression results. But they do not address the most fundamental and intractable methodological and data-related flaws that the peer reviewers and other economists have identified, including the severe correlation/causation problem that economists refer to as "endogeneity," incomplete and incorrect data on pricing and the number of competitors, and mismatches in the pricing and competitor data.[2] Because of these deep-seated flaws, the regressions continue to produce wildly inconsistent and often anomalous results that in many cases defy basic economics, and thus cannot be reasonably relied upon to draw inferences about ILEC market power for DS1 or DS3 services. Moreover, because these flaws are inherent in the available data set, there is no way to

[1] *See* Federal Communications Commission Staff, Update on the Use of Cluster-Robust Standard Errors in Business Data Services Regressions (Aug. 22, 2016) ("FCC 8/22 Memo"), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0822/DOC-340891A1.pdf.

[2] *See, e.g.*, Mark Israel, Daniel Rubinfeld & Glenn Woroch, Analysis of the Regressions and Other Data Relied Upon in the Business Data Services FNPRM And a Proposed Competitive Market Test: Second White Paper, *Business Data Services in an Internet Protocol Environment; Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (June 28, 2016) ("IRW Second White Paper"); Mark Israel, Daniel Rubinfeld & Glenn Woroch, Analysis of the Regressions and Other Data Relied Upon in the Business Data Services FNPRM and a Proposed Competitive Market Test: Third White Paper, *Business Data Services in an Internet Protocol Environment; Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Service*, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (Aug. 9, 2016) ("IRW Third White Paper"); Declaration of John W. Mayo ("Mayo Decl."), attached as Exhibit B to the Comments of Comcast Corp., *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (June 28, 2016); Reply Declaration of Michael L. Katz And Bryan G.M. Keating (On behalf of NCTA), at 21-43 ("Katz/Keating Decl."), attached as Exhibit A to Reply Comments of The National Cable & Telecommunications Association, *Business Data Services in an Internet Protocol Environment; Special Access for Price Cap Local Exchange Carriers*, WC Docket Nos. 16-143, 05-25 (Aug. 9, 2016).

cure them by producing competing regression analyses. Further, as demonstrated below and in the attached White Paper, even if these fundamental flaws are ignored, the regression results do not establish that ILECs have market power, because most of the dozens of new regressions fail to provide any such evidence, and the Commission is not free to cherry pick only the small minority that do, especially here, where the regressions that fail to find evidence of market power are the more comprehensive and rigorous regressions. In all events, if the Commission chooses to credit these regressions, it must also recognize that, as explained below, these same regressions show that current price cap levels are fully constraining ILECs from exercising market power, which means that the Commission must reject proposals to reduce price caps.

Drs. Israel, Rubinfeld and Woroch document in detail the many reasons why the Commission Staff's new regressions, which implement a more appropriate method for calculating statistical significance, leave the Commission's overall set of results for DS3s and DS1s in an even greater shambles than before. Virtually all of the Commission Staff's regression results for DS3 services are now statistically insignificant.[3] For DS1 services, the regressions continue to produce inconsistent, nonsensical, and facially invalid results. For example, the regressions indicate that ILECs charge lower prices in response to competition in *price cap* areas, notwithstanding the fact that ILECs lack regulatory flexibility to do so in such areas; and they indicate ILECs reduce prices in response to competition from two or three competitors, but not in response to competition from one competitor or from four or more competitors.[4] Even as to the small number of statistically significant results, these regressions show that ILEC DS1 prices are at most only 3-4 percent above price levels in "competitive" geographic areas. Even if that relationship were casual (and not merely the result of another factor, such as high costs in the markets at issue), the undisputed economic testimony in this proceeding establishes that any benefits from attempting to regulate prices for such small gains are far outweighed by the substantial risks to investment, innovation, and competition associated with such regulation.[5]

For all these reasons, the Commission Staff's statement that "overall the regressions show [evidence of market power]" for DS1 and DS3 services is indefensible. To the contrary, the "overall" set of regressions, including these new ones, confirm that the flaws in the regressions – both in the underlying data and methods – are too severe to draw any reliable conclusions about market power from the regressions. Indeed, the Commission Staff, together with Professor Rysman, have now placed several dozen regressions in the record that attempt to test whether ILECs exercise market power for DS3 and DS1 services and, with the updated method for computing statistical significance, most of those regressions provide no evidence of

[3] IRW Fourth White Paper at 7.

[4] *Id.* at 11-14.

[5] *Id.* at 14-15; *See also, e.g.*, IRW Second White Paper at 20-21; IRW Third White Paper at 25; Katz/Keating Decl. at 9-72; Declaration of Joseph Farrell, DPHIL, at 2-30 ("Farrell Decl."), attached as Exhibit A to the Comments of Comcast Corp., *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593 (June 28, 2016).

market power, either because they are statistically insignificant or come out the wrong way. Under such circumstances, cherry-picking the vanishingly small number of statistically significant results that support the Commission's initial hypothesis of market power would not only be contrary to a sound and rigorous methodology,[6] but also patently arbitrary.[7] Perhaps more importantly, however, regulating the BDS marketplace based on intuition rather than actual data would cause real harm to consumers and competition. As the Commission itself has recognized, a healthy BDS marketplace is critical to ensuring continued innovation and investment, leading to next-generation broadband services, including mobile 5G services. Imposing regulations that are untethered from the real-world marketplace facts shown in the data can only harm the BDS marketplace and the many products and services that rely on BDS.

Lastly, to the extent the regressions are credited by the Commission, notwithstanding their evident flaws, they highlight an enormous inconsistency in the Commission's *Notice* and in the proposals of some CLECs: if the regressions are credible measures of market power, as they claim, then the regressions also indisputably refute any basis for an X-factor adjustment.[8] The *Notice* and some CLECs suggest that the Commission should both (1) credit the regressions as evidence of ILEC market power and (2) substantially slash price caps using a one-time adjustment and an increased prospective X-factor. But the Commission cannot legitimately make both findings. If ILECs have market power *and* the current caps are set too high, then the regressions would show evidence of market power in Phase I areas – *but they do not*. Therefore, if the Commission relies on the regressions as valid, one of the following statements must be true: (1) the failure to detect market power in Phase I areas means that ILECs lack market power for DS3 and DS1 services or (2) the current price caps levels are at or below competitive levels and are thus constraining ILECs' from exercising market power. If the former is true, the Commission must find that the regressions fail to establish that ILECs have market power and reject proposals for substantial additional regulation of ILEC DS3 and DS1 services. If the latter is true, the Commission must reject proposals to slash current price cap levels because they are already set at or below competitive levels.

I. THE REVISED REGRESSIONS PRODUCE NO LEGITIMATE EVIDENCE THAT ILECs EXERCISE MARKET POWER FOR DS1 AND DS3 SERVICES.

To place the most recent regressions in context, recall that many of the most significant proposals in the *Notice* were based on regressions presented in a paper by Professor Rysman.[9] The theory behind the regressions is that if ILEC prices are higher in areas with less competition, then ILECs may be exercising market power. The regressions therefore look for a statistically

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[6] *See* IRW Fourth White Paper at 4-12.

[7] *See, e.g., Am. Radio Relay League, Inc.* v. *FCC*, 524 F.3d 227, 237 (D.C. Cir. 2008) ("[T]here is no APA precedent allowing an agency to cherry-pick a study on which it has chosen to rely in part."); *see also Kenty Cty.* v. *EPA*, 963 F.2d 391, 396 (D.C. Cir. 1992) (arbitrary and capricious to rely on a single outside memorandum and not review other files).

[8] *See* IRW Fourth White Paper at 12-13.

[9] Marc Rysman, Empirics of Business Data Services: White Paper (Apr. 2016) (revised June 2016) ("Rysman White Paper"), *available at* https://apps.fcc.gov/edocs_public/attachmatch/ DOC-340040A6.pdf.

significant inverse relationship between ILEC prices and measures of competitive activity (*e.g.*, whether a competitor has fiber in the same census block and whether a competitor is connected to a building in the same census block).

The peer reviews and other economic testimony identified both fundamental methodological issues with these regressions as well as substantial and intractable flaws in the underlying data. These problems include, among others, a severe "correlation/causation" problem that economists refer to as "endogeneity," incomplete and incorrect data on pricing and the number of competitors, mismatches in the pricing and competitor data, and incorrect methods for computing the statistical significance of the results.[10]

On June 28, 2016, the Commission Staff submitted new regressions that purported to address one of these issues: the method for computing statistical significance.[11] Professor Rysman's original regressions relied on what are known as "robust" standard errors. But, as the peer reviews and other economic testimony confirmed, robust standard errors overstate statistical significance because they fail to account for the fact that prices and competitive conditions in nearby buildings tend to be highly correlated.[12] They advised instead that "clustered" standard errors should be used, and the question then becomes at what level of geographic granularity observations should be clustered.[13] The Commission Staff originally attempted to address this issue by computing standard errors clustered at the census block level.[14] But the economic testimony showed that this level of geographic granularity is too small.[15] Indeed, about sixty percent of the relevant census blocks have only one observation, such that clustering at the census block level was really no clustering at all.[16] Moreover, the economic testimony identified significant correlation among observations at the census *tract* level, indicating that clustering should occur at no less than that level.[17]

This brings us to the latest round of Commission Staff regressions, which were placed in the record on August 22, 2016. These regressions updated the June 28, 2016 regressions by

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[10] IRW Fourth White Paper at 4; IRW Third White Paper at 11-22; IRW Second White Paper at 7-24; Mayo Decl. ¶¶ 11-25; Katz/Keating Decl. at 21-45; Farrell Decl. at 15-30.

[11] Wireline Competition Bureau, Peer Review of *Empirics of Business Data Services* White Paper by Dr. Marc Rysman (Apr. 2016); *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, at Attachment 1 (June 28, 2016) ("FCC 6/28 Memo"), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0708/DOC-340040A8.pdf.

[12] *See, e.g.*, IRW Second White Paper at 19-20.

[13] *See id.*

[14] *See* FCC 6/28 Memo, Attachment 1.

[15] IRW Third White Paper, at 14-15; 24.

[16] *See id.*

[17] *See id.*

computing statistical significance using clustering at the census tract level. The results are striking. They effectively erase the statistical significance of a large portion of the results from virtually all of the regressions presented in Professor Rysman's original paper.[18]

In an apparent attempt to find *some* evidentiary basis on which to regulate ILEC DS3 and DS1 services, the Commission Staff, in the memorandum accompanying its latest regressions, has pivoted away from the initial regressions on which the proposals in the *Notice* were based to a different subset of regressions. Specifically, Commission Staff conducted Professor Rysman's original regressions again, but disaggregated them to provide independent results for price cap (*i.e.*, no relief), Phase I, and Phase II areas. The theory behind these separate regressions is that the constraining effect of price cap regulation in price cap and Phase I areas may mask evidence of market power in Phase II areas. The Commission Staff purports to find a few statistically significant results in its regressions for Phase II areas, and suggests that these new regressions indicate that ILECs exercise market power for DS3 and DS1 services. As demonstrated by Drs. Israel, Rubinfeld, and Woroch, however, these assertions are without merit.

The New DS3 Regressions. The Commission Staff's new analysis includes six sets of DS3 regressions, which are reported in Tables 14.b-19.b. These new regressions correspond to Professor Rysman's original regressions reported in Tables 14-16, except that they separately examine price cap, Phase I, and Phase II areas. Focusing on the results for Phase II areas, the Commission Staff states that "overall the regressions show competition lowers ILEC prices by an amount that is statistically distinguishable from no effect," which the Commission Staff takes as evidence of ILEC market power for DS3 services.[19] As explained by Drs. Israel, Rubinfeld and Woroch, however, this conclusion is not supported by the regressions.[20]

To begin with, only two of the six regressions (those reported in Tables 14.b and 15.b) indicate that ILECs have higher prices where there is less competition in Phase II areas.[21] The remaining four regressions (those reported in Tables 16.b, 17.b, 18.b, and 19.b) show no statistically significant relationship between ILEC DS3 prices and competition. Thus, contrary to the Commission Staff's assertion, "the overall regressions" actually fail to establish that ILECs exercise market power.

Reliance on the two regressions that produce statistically significant results while ignoring the four other regressions that do not, would be patently arbitrary.[22] That is doubly true here because, as Drs. Israel, Rubinfeld and Woroch demonstrate, the regressions that show no evidence of DS3 market power are also more complete and rigorous than the two outliers – those

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[18] *See* IRW Fourth White Paper at 5-7.

[19] FCC 8/22 Memo at 3.

[20] IRW Fourth White Paper at 4-9.

[21] *Id.* at 9-10.

[22] *See, e.g., Am. Radio Relay League, Inc.*, 524 F.3d at 237 ("[T]here is no APA precedent allowing an agency to cherry-pick a study on which it has chosen to rely in part."); *see also Kenty Cty.*, 963 F.2d at 396 (arbitrary and capricious to rely on a single outside memorandum and not review other files).

regressions account for additional factors that may be affecting the relationship between ILEC prices and competition, and thus are more likely to accurately assess that relationship. Indeed, the regressions reported in Tables 14.b and 15.b, on which the Commission Staff relies, are generally the least comprehensive of the regressions. The regression reported in Table 14.b examines only the relationship between ILEC prices and the presence of a CLEC connection to a building in the same census block. The regression in Table 15.b is the same, except that it also accounts for whether a competitor has deployed fiber in the census block (which should generally be the case when a competitor has a building connection). As shown by Drs. Israel, Rubinfeld and Woroch, the regressions reported in Tables 16.b-19.b – which show no evidence of ILEC market power in Phase II areas – use a more complete set of specifications because they account for other important factors and interactions that can affect ILEC prices that are not included in the regressions reported in Tables 14.b and 15.b.[23] For example, Table 16.a, like Table 15.a, accounts for buildings connections and fiber, but it also accounts for the fact that the existence of a competitor's fiber in a census block is correlated with whether the competitor has a connection in the census block.[24] Tables 17.b and 18.b, like Table 14.b, account for whether a competitor has a connection in the same census block, but they also account for whether that competitor is in the same building as the ILEC. And Table 19 separately examines the impact of different numbers of competitors (one, two, three, or four or more) with connections to a building in the same census block.[25] The fact that these more comprehensive regressions show no evidence of ILEC market power in Phase II areas strongly indicates that the results reported in Tables 14.b and 15.b are driven by their lack of completeness, not by any actual relationship between ILEC prices and competition.[26]

In fact, Dr. Rysman himself recognized that the regressions in Tables 14 and 15 were potentially underspecified, and it is for that reason that he conducted the additional regressions now shown in Tables 16-19.[27] While at the time – based on an improper methodology for calculating statistical significance and failure to focus on Phase II areas – these additional regressions did not produce results that substantially deviated from the regressions in Tables 14 and 15, now that the method for calculating statistical significance has been corrected, the results do deviate. And under those circumstances, the Commission has no choice but to account for the more comprehensive regressions, which the Commission Staff's August 22, 2016 memorandum fails to do.

The Commission Staff's August 22, 2016 memorandum also relies upon another set of regressions, reported in Table 20. As explained by Drs. Israel, Rubinfeld, and Woroch, Table 20

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[23] IRW Fourth White Paper at 7-9.

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] For example, in describing Table 16, Professor Rysman explained that this regression is important to "see if the presence of competitive fiber in the block caused the effect of having a [competitive provider] serve a building to decrease." *See* Rysman White Paper at 22.

does not actually add anything new to the results described above.[28] The regressions reported in Table 20 are the *same* regressions as are reported in Table 14.b, discussed above, which is one of the two tables for which the Commission Staff found statistically significant results.[29] The difference between Tables 14.b and 20 is in how the Commission Staff attempted to obtain effects for only Phase II areas. The regressions reported in Table 14.b focused on Phase II areas by running regressions using only data from Phase II areas. The regressions reported in Table 20 instead used an "interaction variable" to attempt to separate out effects for Phase II areas. Because Table 14.b is one of the two (out of six) regressions for which statistically significant results were found, it is not surprising that the Commission also found some statistically significant results for its sister table (Table 20).[30] Moreover, Table 20 is actually a less reliable version of the regression than Table 14.b, because the Table 14.b regressions examine Phase II areas *directly* by limiting the underlying data to only data from Phase II areas, whereas Table 20 attempts to account for Phase II areas *indirectly* using statistical techniques. For these reasons, Drs. Israel, Rubinfeld and Woroch explain that Table 20 is not relevant because it adds no additional useful information.[31] In all events, the results for the regression in Table 20, like those in its sister Table 14.b are still contrary to the results reported for the more comprehensive regressions contained in Tables 16.b-19.b.[32]

The New DS1 Regressions. The Commission Staff has also run the six new regressions for DS1 services in price cap, Phase I, and Phase II areas. The results for these regressions are reported in Tables 14.a-19.a. As explained by Drs. Israel, Rubinfeld, and Woroch, these regressions produce highly anomalous results and no consistent patterns from which one could conclude that ILECs exercise market power for DS1 services.[33] Rather, these anomalous results and inconsistent patterns are simply further evidence that the deficiencies in the data are driving invalid results – a classic case of garbage in, garbage out. In all events, to the extent these regressions produce statistically significant results, those results are very small (in the 3-4% range).[34] Professor Rysman has described these results as "not especially large by the standards for competition analysis,"[35] and, as noted, other economists have pointed out that the risks of regulation far outweigh any potential benefits of regulations seeking to address such a small effect.[36]

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[28] *See* IRW Fourth White Paper at 7-9.

[29] *See id.*

[30] *See id.*

[31] *See id.*

[32] *See id.*

[33] *See id.* at 11-14.

[34] *See id.*

[35] Rysman White Paper at 21-22.

[36] *See supra* at 2 & n.5.

Drs. Israel, Rubinfeld, and Woroch document multiple anomalous and inconsistent results produced by the DS1 regressions that confirm they are unreliable.[37] For example, Tables 14, 15, 17, 18, and 19 all indicate that ILECs reduce prices in response to competition in areas where they have no pricing flexibility relief at all.[38] These results are nonsensical because ILECs are required to set prices within very narrow bands in these areas, and prices are set by tariff for relatively larger geographic areas (by zones within MSAs).[39] There are simply no practical opportunities for ILECs to significantly adjust prices in response to competition at the building level or census block level as these regressions suggest. As Drs. Israel, Rubinfeld, and Woroch have explained, such anomalies only further confirm that the various limitations and errors in the data are driving the results, not any real world relationships between ILEC prices and competition.[40]

The Commission Staff has previously stated with regard to other regressions that these anomalous results are so small that they can be ignored (they range from about 1.4% to about 2.9%). But if that is the case, then the "evidence" showing market power for DS1 services is also too insignificant to be credited, because those results show roughly the same size pricing effects (about 3.2%) for Phase II areas.[41] Either both are too small to matter or together they confirm the regressions are flawed – either way the regressions cannot legitimately be relied upon as a basis for finding that ILECs exercise market power.

Even setting aside the inconsistencies in the overall results, the regressions for Phase II areas show no consistent pattern from which one could legitimately conclude ILEC prices are lower in areas with competition.[42] Again, the Commission Staff appears to focus its attention on Tables 14.a and 15.a, which purport to show that ILEC prices are slightly lower in areas where at least one competitor has deployed facilities to a building in the same census block. But the more comprehensive and robust analysis shown in Table 16.a – which accounts for a broader range of competitive interactions – shows no statistically significant relationship between ILEC prices and the presence of a competitor connected to a building in the same census block.[43]

The regression results in Tables 14.a and 15.a are further contradicted by the results reported in Table 19.[44] Those regressions show no statistically significant ILEC responses to the presence of (1) one competitor connected to a building in the same census block or (2) *four or more* competitors connected to a building in the same census block. Still further underscoring that the regressions are fundamentally flawed, they simultaneously purport to find a statistically

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[37] *See* IRW Fourth White Paper at 9-12.

[38] *See id.*

[39] *See id.*

[40] *See id.*

[41] FCC 6/28 Memo, Attachment 2, at 1.

[42] *See* IRW Fourth White Paper at 9-12.

[43] *See id.*

[44] *See id.*

significant ILEC response to two or three competitors with connections in the same block. As explained by Drs. Israel, Rubinfeld, and Woroch, there is no legitimate economic theory that would explain why ILECs would ignore one competitor and four or more competitors, but respond aggressively with price cuts when faced with two or three competitors.[45] The only reasonable explanation is that the flaws and limitations in the underlying data are driving erroneous results.[46]

As noted, the Commission Staff's August 22, 2016 memorandum also presents and relies on another set of regressions, reported in Table 20, which uses "interaction" variables to examine separately Phase I and Phase II areas, rather than simply running the regressions separately for Phase I and Phase II areas (as is done in Tables 14.a-19.c.), and thus provide no additional useful information. Moreover, there are actually two relevant versions of this table for DS1 services. One version examines results only for areas within MSAs that have special access demand, and the other version examines all Phase II areas with special access demand. The regression that is limited to MSAs produces relatively small but statistically significant results for DS1 services in Phase II areas, but the regression that covers all areas (not just MSAs) produces no statistically significant results for DS1 services in Phase II areas. Again, there is no non-arbitrary basis for picking one result and ignoring the other.[47] Rather, these inconsistent results simply underscore that the underlying data and other problems with these regressions are producing unreliable and clearly incorrect results.[48]

Even if there were a legitimate basis for relying on the subset of DS1 regression results that produce statistically significant results for Phase II areas, those results, as with Professor Rysman's original regressions, show that ILEC prices are only slightly above competitive levels in areas where competition is lacking (in the 3-4% range). As noted, Professor Rysman himself has acknowledged that such results are "not especially large by the standards of competition analysis."[49] Indeed, the multiple economists that have examined these effects have consistently determined that the risks of regulating DS1 services – decreased investment, innovation, and competition – far outweigh any potential benefits of reducing ILEC prices by 3-4 percent.[50]

II. IF THE COMMISSION RELIES ON THE REGRESSIONS, IT MUST REJECT PROPOSALS TO REDUCE PRICE CAPS.

As discussed above, the Commission Staff's discussion of its new regressions focuses on the results for Phase II areas. It is notably silent, however, about the results of the regressions for Phase I areas. In fact, the results for Phase I areas raise serious concerns about central components of the proposals to further regulate DS3 and DS1 services

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[45] *See id.*

[46] *See id.*

[47] *See id.*

[48] *See id.*

[49] Rysman White Paper at 21-22.

[50] *See supra* at 8 & n.34.

Most of the regression results for Phase I areas – including those for Tables 14 and 15 – show no statistically significant evidence of ILECs exercising market power.[51] If the Commission chooses to credit the regressions as an accurate means of detecting market power (notwithstanding the intractable data flaws and errors), there can be only two explanations for these results in Phase I areas: (1) due to competition, ILECs *cannot* exercise market power or (2) the current price caps are set at or below competitive levels and are thus preventing ILECs from exercising market power in Phase I areas.[52] There are no other explanations.

For this reason, if the Commission chooses to credit the regressions – *i.e.*, find that they can detect ILEC market power – the results for Phase I areas mean the Commission must either (1) reject claims that ILECs exercise market power for DS3 and DS1 services, (2) reject claims that price caps should be slashed because they are set above competitive levels, or (3) reject both claims. There is no other internally consistent way to interpret these regression results.[53]

Sincerely,

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[51] *See* IRW Fourth White Paper at 12-14.

[52] *Id.*

[53] *Id.*